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★ SEP 22 2009 ★

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

-AGAINST-

ANDRE HARRIS,

DEFENDANT.
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A P P E A R A N C E S:

For the Government:

Benton J. Campbell
United States Attorney
Eastern District of New York
One Federal Plaza
Central Islip, New York 11722
By: Richard Donoghue, A.U.S.A.

For Defendant:

Glenn A. Obedin, Esq.
83 Carleton Avenue
Central Islip, New York 11722

HURLEY, Senior District Judge

By letter dated July 8, 2008, defendant has moved to be resentenced pursuant to 18 U.S.C. § 3582(c)(2) and U.S.S.G. § 1B1.10 (as amended effective March 3, 2008).

On November 8, 2002, the defendant pled guilty to Counts Two and Three of the three-count indictment. Count Two charged that on September 29, 2001, the defendant distributed cocaine base in an amount of 50 grams or more, in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(A)(iii). Count Three charged that on September 29, 2001, the defendant, having a prior felony conviction, possessed a firearm, in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2).

He was sentenced by me on January 31, 2003 to 151 months of imprisonment on Count Two and 120 months on Count Three, to be served concurrently, plus five years of supervised release. Reference to the Federal Bureau of Prisons Inmate Locator system indicates that defendant's projected release date is February 7, 2013.

It is agreed by the parties that the motion is addressed to the Court's discretion. In exercising that discretion, the Court should view the factors listed in § 3553(a) in conjunction with the lowered guideline range triggered by the crack guideline amendment. Here, the initial guideline range in effect at the time of sentence was 151 to 188 months. The current adjusted advisory guideline range is 121 to 151 months.

Having reviewed the original presentence report the July, 2009 Addendum thereto, as well as the submissions of counsel, and having considered the factors listed in § 3553(a) together with the applicable policy statements issued by the Sentencing Commission, defendant's motion is granted solely to the extent that the period of incarceration provided in his January 2003 sentence under Count Two is reduced 121 months. In all other respects, however, his initial sentence shall remain unchanged.

SO ORDERED.

Dated: Central Islip, New York
September 22, 2009



DENIS R. HURLEY, U.S.D.J.